IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17947 of 2003
with
SPECIAL CIVIL APPLICATION No 17950 of 2003
with
SPECIAL CIVIL APPLICATION No 675 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATUBHAI PARSOTTAMBHAI PATEL

Versus

TARAPUR CO-OP URBAN BANK LTD

Appearance:

1. Special Civil Application No. 17947 of 2003
MR VIKRAM J THAKOR for Petitioner No. 1
MRS KANAN R SHAH for Respondent No. 1
MR RAVINDRA SHAH for Respondent No. 1
MR DIPEN DESAI, AGP for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3

2. Special Civil Application No. 17950 of 2003
MR VIKRAM J THAKOR for Petitioner No. 1
MRS KANAN R SHAH for Respondent No. 1
MR RAVINDRA SHAH for Respondent No. 1
MS ARCHANA RAVAL, AGP for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

3. Special Civil Application No. 674 of 2004
MR VIKRAM J THAKOR for Petitioner No. 1
MRS KANAN R SHAH for Respondent No. 1
MR RAVINDRA SHAH for Respondent No. 1
MS FHALGUNI PAEL, AGP for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/10/2004

COMMON ORAL JUDGEMENT

Rule. Mr.Ravindra Shah, Learned Advocate waives service of rule on behalf of the respondent no.1 in all the matters. Mr.Dipen Desai, Ld. AGP waives service of rule on behalf of respondent no.1 in SCA No. 17947 of 2003. Ms.Archana Raval, Ld. AGP waives service of rule on behalf of respondent no.1 in SCA No. 17950 of 2003. Ms.Fhalguni Patel, Ld. AGP waives service of rule on behalf of respondent no.1 in SCA No. 675 of 2004.

2. In all these petitions, the respective petitioners have mainly prayed for an appropriate writ, direction or order quashing and setting aside the impugned auction proceedings held by the respondent no.1 bank on 23.7.2003 and to direct the respondent no.1 bank to return the gold ornaments mortgaged by the petitioner in respect of the respective loan accounts.

3. While issuing notice in the petitions, this Court had passed an order directing the respective petitioners to deposit the amount which was due and payable by them on the statement made by them that they are ready and willing to deposit the amount which was due and payable and on that condition, the auction was stayed. Today when the matters are called out, Shri Vikram Thakore, Learned Advocate for the respective petitioners has submitted that so far as SCA No. 127947 of 2003 and SCA No. 17950 of 2003 are concerned, they have already deposited the entire amount due and payable by them as per the notice and so far as SCA No. 675 of 2004 is concerned, the petitioner of that petition has deposited only the principal amount and the amount of interest is not deposited.

4. Shri Vikram Thakore, Learned Advocate for the respective petitioners has submitted that as the amount

is already deposited as per the notice, the gold ornament which are with the respondent bank should be directed to be returned to the petitioners. Shri Thakore has relied upon the receipt issued by the respondent bank which was issued at the time of taking the gold ornaments while sanctioning the loan and has submitted that there are all possibilities that the gold ornaments may not be returned to the petitioners. His apprehension is on the basis of some criminal complaint filed by the bank against some other persons in which cases, the original ornaments were not found.

5. Shri Ravindra Shah, Learned Advocate who appears on behalf of the respondent bank has submitted that on deposit of the amount as per the demand notice, the gold ornaments which are lying with the respondent no.1 bank would be returned to the respective petitioners as even those gold ornaments are at present also in a sealed condition. He has further submitted tha the seal will be opened in the presence of the respective petitioners as well as the goldsmith of the bank. Under the circumstances, the respondent no.1 bank is directed to return the gold ornaments which were given to the respondent no.1 bank by way of security at the time of sanctioning the loan which according to the respondent no.1 is in a sealed condition to the petitioners on return of the entire amount due and payable by the petitioners in presence of the petitioners as well as in presence of the goldsmith of the bank within a period of four weeks from today. If there is any dispute with regard to the ornaments and if the petitioners are not satisfied then it will be open for either parties to take recourse to law in accordance with law. With these observations and directions, these petitions are partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(M.R.Shah, J)
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